(19,307.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 232.

WESTERN TIE AND TIMBER COMPANY, APPELLANT,

vs.

BEN A. BROWN, TRUSTEE OF THE ESTATE OF S. F. HARRISON, A BANKRUPT.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

INDEX.

	Original.	Print.
Caption to transcript from United States circuit court of appeals	1	1
Proceedings in district court of the United States for the eastern district of Arkansas	1	1
Order of reference	1	1
Order of adjudication	2	2
Proof of claim of Western Tie and Timber Company	2	2
Note of S. F. Harrison to Western Tie and Timber Company	5	4
Statement of account	5	4
Motion of trustee to expunge claim of Western Tie and Timber Co.	6	5
Order of submission to United States circuit court of appeals	7	6
Order to file finding of facts and conclusions of law	7	6
Finding of facts and conclusions of law	8	7
Opinion of United States circuit court of appeals	11	8
Decree of United States circuit court of appeals	17	14
Petition for appeal	17	15
Assignment of errors	19	16
Bond on appeal	21	18
Citation and acceptance of service	24	19
Clerk's certificate to transcript	27	20

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 14, 1904.

1 Pleas and proceedings in the United States circuit court of appeals for the eighth circuit at a term thereof begun and held at the United States court house in the city of St. Louis, Missouri, on the first Monday in December, being the seventh day of December, A. D. 1903, before the Honorable Walter H. Sanborn, Honorable Amos M. Thayer and Honorable William C. Hook, circuit judges.

Attest:

[Seal United States Circuit Court of Appeals, Eighth Circuit,]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered that heretofore, to-wit: on the eighteenth day of July, A. D. 1903, a transcript of record, pursuant to an appeal from the district court of the United States for the eastern district of Arkansas, was filed in the office of the clerk of the United States circuit court of appeals for the eighth circuit in a certain cause wherein The Western Tie and Timber Company is appellant and Ben A. Brown, trustee of the estate of S. F. Harrison, bankrupt, is appellee, No. 1953, and that in pursuance of general order number 36 of the general orders in bankruptcy relating to appeals, the following portions of said transcript are certified in accordance with the præcipe of counsel for the appellant, Western Tie and Timber Company.

(*Order of Reference.*)

In the Matter of S. FRANK HARRISON, Bankrupt. No. 48.

Whereas on the 24th day of February, 1903, a petition was filed to have S. Frank Harrison, of Pocahontas, in the county of Randolph, and district aforesaid, adjudged a bankrupt, under
2 the acts of Congress relating to bankruptcy, and whereas the judge of said court was absent from said division of said district at the time of filing said petition, it is thereupon ordered that said matter be referred to Charles F. Cole, one of the referees in bankrupty of this court to consider said petition and take such proceedings therein as are required by said acts, and that said S. Frank Harrison shall attend before said referee on the 6th day of March, 1903, at Pocahontas.

(*Order of Adjudication.*)

In the District Court of the United States for the Northern Division of the Eastern District of Arkansas.

In the Matter of S. FRANK HARRISON, Bankrupt.

At Batesville, in said district, on the 24th day of February, 1903.

On this day received from J. W. Parse, clerk of this court, certificate of the absence of the district judge from the said division, and an order of reference with the petition and schedules in the matter of S. Frank Harrison, of Pocahontas, in said district, in bankruptcy.

And upon due consideration of said petition it is ordered that the said S. Frank Harrison be, and he is hereby adjudged and declared to be a bankrupt within the true intent and meaning of the acts of Congress relating to bankruptcy.

CHARLES F. COLE, *Referee.*

(*Proof of Claim of Western Tie and Timber Company.*)

In the District Court of the United States for the Eastern District of Arkansas, Northern Division.

In re S. F. HARRISON, Bankrupt. No. —. In Bankruptcy.

On this fourteenth day of May, A. D. 1903, comes Walter Poleman, and upon his oath says that he is the treasurer of the Western Tie and Timber Company, a corporation under the laws of
3 the State of Arkansas, and that S. F. Harrison, the person by whom the petition for adjudication of bankruptcy has been filed, was, at and before the filing of said petition, and still is justly and truly indebted to said corporation in the sum of $22,154.26, evidenced by his promissory note executed to the said corporation on the 16th day of January, 1903, the original of which was exhibited to this court heretofore by said Western Tie & Timber Company, and a copy of which is now on file with the court in proof of indebtedness heretofore filed by said Western Tie & Timber Company, against said bankrupt, and a further copy whereof is hereto attached. That the consideration of said note is money loaned and advanced by said Western Tie & Timber Company to said bankrupt, and that there are no payments on the same, and no set-offs or counter-claims against the same, except as may otherwise in this proof appear.

And that neither the Western Tie & Timber Company, nor any person or persons by its order, has or holds any sort or character of security for said claim other than herein set forth.

And affiant further says that on said 16th day of January, 1903, the said bankrupt was indebted to the said Western Tie and Timber Company, in addition to the amount of the said note, in the sum of $5,570.00 for money loaned by the said Western Tie & Timber Company to said bankrupt, and for which additional sum of money no note was had, or has, been taken, and that on said date the total amount due by said bankrupt to the Western Tie & Timber Company for money so loaned and advanced, was the sum of $27,724.26, and that on said date the Western Tie & Timber Company took possession of certain chattel property upon which it had been previously given a mortgage by said bankrupt as security for said debt, and agreed with the bankrupt upon the sum of $5,570.00 as the fair value thereof, and having given the bankrupt credit for that amount on account of said indebtedness, took his note for the balance due, being the note heretofore proved and herein again proved against said estate.

4 And the said affiant further says that since that time, it has been adjudicated by this court that said Western Tie & Timber Company was not entitled to any of said property under said mortgage other than that set out in the annexed account, and he further says that the value of the property as credited to said debt in the annexed statement is at least equal to the full, fair cash value thereof and to the value thereof in the appraisement herein as far as it has been appraised and that the only security held by said Western Tie & Timber Company for either of said claims is the total value of said property held under said mortgage as set forth in the annexed account, to-wit: the sum of $2,309.00.

And he further says that there have been no payments thereon, and that there are no off-sets nor counter-claims thereto other than such as are shown on the annexed account amounting, in the aggregate, to the sum of $1,167.96. And that the total sum now due the said Western Tie & Timber Company is the amount of said note with interest, and said sum of $5,570.00, less $1,167.96, off-sets, and $2,309.00, as the total value of the property held as security, leaving a net balance on said account of $2,093.04 due said Western Tie & Timber Company, and that no part of said mentioned sum has been paid except as shown by said annexed account, and no note has been taken therefor, and no judgment recovered on either of said debts, and that the said Western Tie & Timber Company has no security for either, other than as herein set forth, nor has any other person to its order.

WALTER POLEMAN.

STATE OF ARKANSAS, } ss:
County of White, }

Subscribed and sworn to before me this 15th day of May, A. D. 1903.

[L. S.] SAM J. CRABTREE,
Notary Public.

My commission expires July 6th, 1903.

5 (*Note S. F. Harrivon to Western Tie & Timber Co.*)

$22,154.26. POCAHONTAS, ARK, 1/16, 1903.

One day after date I promise to pay to the order of Western Tie & Timber Company, twenty-two thousand one hundred and fifty-four and 26/100 dollars, at St. Louis, with 6 % from date till paid, value received.

S. F. HARRISON.

Statement of Account.

S. F. Harrison to Western Tie & Timber Company, Debtor.

1903.

Jan. 16. To balance due for money loaned, after deducting amount for which note was given on that date, to wit: $22,154.26..... $5,570.00

Credits not deducted at giving of note because arising since note was given:

1903.

Jan. 21.	Deductions from pay-roll.....	$671.36
Jan. 31.	Deductions from pay-roll.....	357.34
Feb. 19.	Deductions from pay-roll.....	139.26
	Total credits.....	$1167.96

Securities held:

Saw mill taken under mortgage and title note, valued at and worth not exceeding.....	$1500.00
28 head of cattle, valued at, appraised at, and worth not exceeding.....	428.00
13 hogs valued at, appraised at and worth not exceeding $7.50 each.....	97.50
2 mules appraised at and worth not exceeding.....	175.00

6	1 two-horse plow, appraised at and worth not exceeding....	5.00	
	2 cultivators appraised at and worth not exceeding.....	20.00	
	1 Buckeye mower, appraised at and worth not exceeding.....	15.00	
	1 two horse plow, appraised at and worth not exceeding.....	3.50	
	2 double-shovel plows, appraised at and worth not exceeding.....	2.00	
	1 roller appraised at and worth not exceeding.....	3.00	
	2 horses valued at and worth not exceeding.....	60.00	
	Total securities.....	.....	$2309.00
	Aggregate of credit deduction & securities.....		$3,476.96
	Balance due.....	.....	$2,093.04

(Motion of Trustee to Expunge Claim of Western Tie and Timber Company.)

In the District Court of the United States for the Northern Division of the Eastern District of Arkansas.

In re S. F. HARRISON, Bankrupt. In Bankruptcy.

Comes Ben A. Brown, trustee herein and would respectfully show to the court that the Western Tie & Timber Company who have proved a claim against this estate have not proved their whole claim. But have only proved a part of the same, and have credited a large quantity of land, timber, cross ties and other property on the unproven part of their claim, and are thus obtaining a preference over other creditors. Wherefore this trustee prays that the claim of the Western Tie & Timber Company, proved against this estate, be expunged.

7

STUCKEY & STUCKEY,
H. L. PONDER, &
C. H. HENDERSON, *For Trustee.*

Indorsed: Filed April 17, 1903. Chas. F. Cole, referee.

(*Order of Submission.*)

And on the fourth day of January, A. D. 1904, in the record of the proceedings of said circuit court of appeals is an order of submission in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1903.

MONDAY, *January* 4, 1904.

WESTERN TIE AND TIMBER COMPANY, Appellant, *vs.* BEN A. BROWN, Trustee, &c.	No. 1953. Appeal from the District Court of the United States for the Eastern District of Arkansas.

This cause having been called in its regular order on the merits, the same was argued by Mr. F. H. Sullivan in behalf of the appellant and by Mr. S. M. Stuckey for the appellee.

Thereupon the cause was submitted to the court on the merits, upon the transcript of record from said district court and the briefs of counsel filed herein.

(*Order to File Finding of Facts and Conclusions of Law.*)

And on the second day of April, A. D. 1904, in the record of the proceedings of said circuit court of appeals is an order in said cause to file the finding of facts and conclusions of law *nunc pro tunc* as of the date of the filing of the opinion, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1903.

SATURDAY, *April* 2, 1904.

8 WESTERN TIE AND TIMBER Company, Appellant, *vs.* BEN A. BROWN, Trustee of the Estate of S. F. Harrison, Bankrupt, Appellee.	No. 1953. Appeal from the District Court of the United States for the Eastern District of Arkansas.

On motion of F. H. Sullivan, counsel for the Western Tie & Timber Company, it is ordered, that the attached finding of facts and conclusions of law of this court be filed *nunc pro tunc* as of the

date of the filing of the opinion upon which the judgment of affirmance herein was based.

April 2, 1904.

(*Finding of Facts and Conclusions of Law.*)

The circuit court of appeals of the eighth judicial circuit finds these to be the facts in this case:

1. On February 24, 1903, a petition to procure an adjudication that S. Frank Harrison was a bankrupt was filed in the district court of the United States for the eastern district of Arkansas and Harrison was then adjudged a bankrupt.

2. The Western Tie & Timber Company was a corporation and a creditor of Harrison. It presented a claim against his estate in bankruptcy of $24,358. The trustee moved to expunge this claim on the ground that the tie company had secured a voidable preference. The district court ordered the claim expunged unless the tie company should pay to the trustee $2210.73 and an appeal from this order was taken to this court.

3. For some years prior to February 24, 1903, the tie company and Harrison had been engaged in removing timber from land of the former and converting it into ties which the company received and sold. For many months prior to October, 1902, Harrison had owned and conducted stores in the vicinity of the places where the work of cutting and hauling the ties was carried on and had furnished the laborers engaged in that work with groceries and other supplies. These laborers and Harrison were paid by the tie
9 company in this way: Once in two or four weeks an inspector sent to the tie company a pay roll on which the name of each laborer, the amount he had earned and the value of the supplies he had received from Harrison appeared. The company deducted from the earnings of each laborer the value of the supplies the laborer had received and sent him a check for the balance. At the same time it sent to Harrison a check for the aggregate amount of the supplies which he had furnished to the laborers.

4. Four months before the filing of the petition in bankruptcy or October 24, 1902, Harrison owed the tie company more than $20,000.

5. Between December 27, 1902, and February 24, 1903, the company refused to pay to Harrison, retained and credited on its claim against him $2210.73, which was due him for supplies he had furnished to the laborers subsequent to November 30, 1902.

6. At all times when the amounts which aggregate $2210.73 became due and were retained by the company Harrison was insolvent, the tie company knew that fact and it intended by retaining these amounts to secure to itself a preference over the other creditors of the insolvent, but Harrison had no such intention.

7. After the company had retained several hundred dollars of the

amount due Harrison for the supplies, it advanced to him $75 under a new and further credit.

And as conclusions of law the court finds:

A. The retention of the tie company of the $2210.73 constituted a voidable preference under the bankrupt law as amended.

B. The trustee is entitled to an order expunging the claim of the tie company unless that company pays to him the sum of $2135.73.

(Endorsed:) No. 1953. U. S. circuit court of appeals. 8th circuit. Western Tie & Timber Company, *vs.* Ben A. Brown, trustee &c. Findings of fact and conclusions of law. Filed by order of court Apr. 2, 1904, as of March 28, 1904, John D. Jordan, clerk.

10 (*Opinion.*)

And on the twenty-eighth day of March, A. D. 1904, an opinion of said circuit court of appeals was filed in said cause, in the words and figures following, to-wit:

11 United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1903.

WESTERN TIE & TIMBER COMPANY, Appellant, *vs.* BEN A. BROWN, Trustee of the Estate of S. F. Harrison, Bankrupt, Appellee.	No. 1953. Appeal from the District Court of the United States for the Eastern District of Arkansas.

Mr. F. H. Sullivan for appellant.

Mr. S. M. Stuckey (Mr. M. S. Stuckey and Mr. H. L. Ponder were with him on the brief) for appellee.

Before Sanborn, Thayer, and Hook, circuit judges.

Syllabus.

1. Bankruptcy—Transfer to preferred creditor not indispensable to preference under § 60*a*.—Under § 60*a* of the bankrupt law of 1898, as amended, a transfer of the debtor's property may constitute a preference although the property is not conveyed to the preferred creditor, if the effect of the transfer is to enable the creditor to receive out of the debtor's estate a larger percentage of his claim than others of the same class obtain.
2. Bankruptcy—Voidable preference—Intention of debtor to give, not indispensable.—An intention on the part of the insolvent to give a preference by means of a transfer he makes is not

indispensable to the existence of a voidable preference under § 60 of the bankrupt law, as amended, (32 Stat. 799). It is sufficient that a transfer of the insolvent's property is made which has the effect to give a preference and that the party who receives it has reasonable cause to believe that it is intended by the party who procures the transfer or who gives to the transfer the effect of a preference that it should have
12 that effect, although the insolvent is innocent of that intention.

3. Bankruptcy—Voidable preferences not allowable as offsets under § 68.—Preferences voidable under §§ 60*a* and 60*b* of the bankrupt law, as amended, are not allowable as setoffs against claims of the preferred creditors under § 68 on the ground that the preferences and the claims constitute mutual debts and credits.

4. Voidable preference—Facts.—A company was hiring laborers to gather ties. The insolvent was operating stores and supplying the men. For many months an inspector had sent a pay roll once in about two weeks to the company upon which the name of each laborer, his earnings and the amount furnished him by the insolvent, appeared. The company had uniformly deducted the price of the supplies from the earnings of each man, had sent him a check for the balance and had sent the insolvent a check for the supplies furnished. The insolvent owed the company more than $20,000, when, within four months of the filing of the petition in bankruptcy, it retained the amount owing the insolvent for the supplies furnished for three months and credited him with this amount, $2210.73, on its claim against him.

Held, this was a voidable preference and the claim of the company against the estate of the bankrupt should be expunged unless it pays to the trustee the amount it thus withheld.

SANBORN, circuit judge, delivered the opinion of the court:

This is an appeal from an order of the district court that the claim of the Western Tie & Timber Company against the estate of S. F. Harrison, a bankrupt, be expunged unless the company pays to the trustee the sum of $2210.73, which the court below found had been transferred to the company by the bankrupt in such a way that the transaction constituted a preference.

A motion has been made to dismiss the appeal under rule 11 of this court because the assignment of errors was not filed at the time of, or before the allowance of the appeal. The record, however, does not establish the fact upon which this motion is founded. The order allowing the appeal, the citation, the admission of service of the citation and the bond are dated June 12, 1903. The approval of the bond and the assignment of errors are not dated. All these papers were filed June 16, 1903. As the assignment of errors was

filed at the same time as the other appeal papers, the presumption is that it was presented to the court with them when the appeal was allowed, and the motion to dismiss is denied.

Harrison was adjudged a bankrupt on February 24, 1903. Prior to that time he owned some merchandise in two stores and he was engaged in forwarding the work of gathering ties from the lands of the tie company and in selling supplies to the laborers engaged in this work. Once in two or three weeks an inspector sent to the company a pay roll upon which the name of each workman, the amount owing to him for his services and the price of the supplies which Harrison had furnished him, appeared. The company uniformly deducted from the wages due each workman the price of the supplies Harrison had delivered to him, sent the workman its check for the balance and sent Harrison the price of all the supplies he had furnished to the laborers. This course of dealing had
13 been followed for many months on October 24, 1902, four months before the filing of the petition in bankruptcy. On that day Harrison owed to the company more than $20,000. He owed other creditors many thousand dollars. The tie company held a mortgage on his property to secure the payment of $15,000 to it and he was insolvent. During the month of December he applied to the tie company to advance him more money and it refused his request. Thereafter when the pay rolls for December, 1902, and January and February, 1903, came in, the company paid the laborers as usual, but instead of sending to Harrison as it had become accustomed to do, the price of the supplies which he had delivered to the men, it credited him with this amount which aggregated $2210.73, and in this way secured a payment of this amount upon its claim against him. The referee and the district court held that this transaction gave to the tie company a voidable preference and required it to pay to the trustee $2210.73 as a condition of the allowance of its claim against the estate of the bankrupt.

This ruling is challenged by counsel for the appellant on three grounds, because no transfer of anything by Harrison to the appellant was shown, because there was no proof that Harrison was insolvent or that the tie company had any notice of his insolvency when it withheld the price of the supplies and because there was no evidence that Harrison intended to prefer the tie company when he delivered the supplies to the men or that the company had any notice of any such intention.

But the test of a preferential transfer under the bankrupt act of 1898 is not whether or not the debtor has conveyed anything to the creditor, or whether or not the creditor has received anything from the debtor. It is whether or not the debtor has made a transfer of any of his property to anyone in any way whereby the enforcement of the transfer will enable one of his creditors to obtain a greater percentage of his debt than any other creditor of his class can secure. So the question in this case is not whether or not Harrison transferred any of his property directly to the tie company, but whether

or not any transfer of his property was made in the time and manner denounced by the bankrupt law so that the tie company was enabled to secure a larger percentage of its claim against him than other creditors of its class can obtain.

One of the main purposes of the bankrupt law is to distribute the unexempt property which the bankrupt has four months before the filing of the petition in bankruptcy, share and share alike, among his creditors. In order to attain this object the law provides that if a person, being insolvent, has, within four months before the filing of the petition, made a transfer of any of his property, the effect of the enforcement of which will be to enable anyone of his creditors to obtain a greater percentage of his debt than any other of his creditors of the same class, he shall be deemed to have given a preference, and that if he has given a preference and the person receiving it or to be benefited thereby, or his agent acting therein, shall have had reasonable cause to believe that it was intended thereby to give a preference, the claim of the creditor who has received such a preference shall not be allowed unless he surrenders it. §§ 60*a*, 60*b*, 57*g*, 32 Stat. 799, c. 487, §§ 12, 13; *Swartz v. Fourth Nat. Bank*, 117 Fed. 1, 3, 4, 54 C. C. A. 387, 389, 390. The uniform practice of the tie company for many months before October, 1902, to pay to Harrison once or twice in thirty days the price of all the supplies which he furnished to the workmen who prepared
14 and hauled the ties for it, warranted a finding and conclusion that while Harrison delivered the goods to the workmen he sold them to the tie company and that company became legally and morally bound to pay him their value. When, therefore, the company refused to pay him and credited him on account of these goods with $2210.73 upon its claim of $20,000 against him the effect of the transaction was to pay $2210.73 of Harrison's indebtedness to the tie company with these supplies which were a part of his estate. Moreover, whether the workmen or the tie company were the legal debtors of Harrison for these supplies, the actual result of the transaction was the same. Within the four months before the filing of the petition the supplies were a part of the estate of the insolvent Harrison. At the end of the four months they had been converted into ties which were a part of the property of the company. The latter had received in the ties the value of $2210.73 which had been transferred to it from the estate of Harrison and for which it had paid nothing to the workmen or to Harrison except by means of the credit it had given to Harrison upon its claim against him. But every transfer of his property by an insolvent within four months of the filing of the petition in bankruptcy which has the effect to "enable any one of his creditors to obtain a greater percentage of his debt" out of the property of the insolvent "than any other of such creditors of the same class" is a preference. *Swartz v. Fourth Nat. Bank*, 117 Fed. 4, 54 C. C. A. 390. The transfer of the supplies which were a part of the property of Harrison enabled the tie company to obtain about 10 per cent. more of its debt out of his estate

than other creditors of its class can secure, and the contention that this transaction did not constitute a preference under the law cannot be maintained.

Was Harrison insolvent when the company secured this preference and did the latter have notice of this fact? The answer must be in the affirmative. He owed the tie company more than $20,000. It held a mortgage on his property which had been made in January, 1902, to secure the payment of $15,000. He had frequently made statements of his assets and liabilities to the company which showed the former to be "a little bit more" than the latter. In December he applied for the advance of more money and the company refused his request because it had received information that his indebtedness was greater than he had represented it to be. Thereupon, on December 28, 1902, the company first applied an installment of its indebtedness to Harrison for the supplies furnished to its workmen to the payment of a part of the bankrupt's indebtedness to it. These facts convince that Harrison was insolvent and that the tie company knew it before it applied its indebtedness to him in payment of its claim against him.

There is no evidence in the record before us that Harrison ever intended by the sale of the supplies to prefer the tie company to his other creditors. Prior to December, 1902, the company had invariably sent him its checks for the supplies which he delivered and he probably expected that it would and intended that it should continue to do so. If it had done so, no preference would have been created. It failed to continue its practice and by withholding payment for the supplies from Harrison and crediting him with their price it secured a payment of $2210.73 upon its claim against him. Counsel for the company persuasively argue that this transaction did not constitute a voidable preference because Harrison did not intend to give any preference by means of it. But an intention on the part of the insolvent to give a preference by means of a transfer which he makes is not always indispensable to its existence. It is sufficient if he has given the preference and the party receiving it has reasonable cause to believe "that it was intended thereby to give" it. The statute does not require that it should be intended by the debtor, but is fully satisfied by the existence of an intention on the part of the actor, the person who procures, brings about or effects the transfer. The preferences denounced by the statute are often secured by creditors without any desire or intention on the part of the debtors to give them as in cases in which the creditors obtain judgments against their debtors over defenses made to the actions in good faith, and in cases, like that at bar, where, without the consent of their debtors, creditors appropriate to the payment of their claims the property of their debtors which happens to be under their control. Such transactions are none the less voidable preferences that the debtors do not intend them to have that effect. If they are conducted within the four months and if they have the effect to give to the creditors who con-

ceive and execute them larger percentages of their claims than other creditors of the same class receive, they fall as clearly under the ban of the law as transfers made by debtors with the intent on their part to give the preferences. Such a transaction is voidable by the trustee not only when the party receiving it has reasonable cause to believe that it was intended by the debtor but also when it was intended by the creditor, or by the actor who accomplished the result, to work a preference by means of the transaction. §§ 60*a*, 60*b*, 57*g*, 32 Stat. 799. The tie company in this case had reasonable cause to believe that the transaction which it conducted was intended to give it a preference over the other creditors of Harrison in its class. Indeed, it knew that this was the object of the transaction. It knew that its own intention and purpose was to secure such a preference by applying the debt it owed to Harrison for the supplies in part payment of its large claim against him for money advanced and it attained its object at least temporarily. The transaction fell fairly within the terms of § 60 and it constituted a voidable preference.

Finally, it is said that this $2210.73 was a credit to Harrison and that the company should be permitted to set it off against his debt to it and should be allowed to prove its claim for the balance remaining without restriction on the ground that these claims were mutual debts and credits under § 68 of the bankrupt law. But this section must be read and construed with sections 60*a*, 60*b* and 57*g* and in the light of the dominant purpose of the law to distribute to the creditors equally all the unexempt property owned by the insolvent four months before the petition in bankruptcy is filed. When it is thus read it becomes plain that preferences denounced by and made voidable under sections 60*a* and 60*b* cannot be permitted to stand as offsets against claims of the preferred creditors against the bankrupt which accrued more than four months before the filing of the petition. If this could be done, any creditor who had a running account with his debtor could secure an unassailable preference by simply receiving and crediting upon this account within the four months sufficient money or property of his debtor to satisfy his claim. The truth is that the law draws a line through the account between the insolvent and his creditor four months before the petition in bankruptcy is filed. All mutual debts and credits which accrue prior to that time may be set off against each other. Credits to the insolvent accruing subsequent to that time which constitute voidable preferences under section 60 are excepted by that section
16 from the subsequent provisions found in section 68 and they cannot be used to offset debts of the insolvent which accrue prior to that date. The mutual debts and credits which accrue within four months of the filing of the petition and which do not constitute voidable preferences may be set off against each other as well as against the respective debts and credits accruing more than four months before the petition is filed. The credit to Harrison of the $2210.73 constituted a voidable preference and cannot therefore be lawfully set off against the claim of the tie company against him

under section 68. There is, however, an item of $75 in the claim against Harrison which may perhaps properly be used to reduce the amount of the preference under section 60c, which provides that a claim for money or property delivered to a debtor under a new or further credit by a creditor after he has been preferred may be offset against the preference. While the evidence is not very satisfactory, it seems to indicate that this $75 was advanced to Harrison after the company had secured a preference to the amount of $1042.77. The amount to be refunded by it will accordingly be reduced by the sum of $75 and the order of the court below will be modified to the effect that the claim of the Western Tie & Timber Company against the estate of the bankrupt, Harrison, be expunged unless the company pays to the trustee of the estate $2135.73 within twenty days after the mandate of this court is filed and entered in the court below and the order thus modified will be affirmed. It is so ordered.

Filed March 28, 1904.

(*Decree.*)

And on the twenty-eighth day of March, A. D. 1904, in the record of the proceedings of said circuit court of appeals is a decree in said cause, in the words and figures following, to-wit:

17 United States Circuit Court of Appeals, Eighth Circuit, December Term, 1903.

MONDAY, *March* 28, 1904.

WESTERN TIE AND TIMBER COMPANY, Appellant, *vs.* BEN A. BROWN, Trustee of the Estate of S. F. Harrison, Bankrupt.	No. 1953. Appeal from the District Court of the United States for the Eastern District of Arkansas.

This cause came on to be heard on the transcript of the record from the district court of the United States for the eastern district of Arkansas, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court, that the order and decree of the said district court, in this cause, be, and the same is hereby, modified, to the effect that the claim of the Western Tie and Timber Company against the estate of the bankrupt, Harrison, be expunged unless that company shall pay to the trustee of the estate $2135.73 within twenty days after the mandate of this court is filed and entered in the court below, and that as thus modified, the order and decree of the said district court, in this cause, be, and the same is hereby, affirmed with costs; and that Ben A. Brown, trustee of the estate of

S. F. Harrison, bankrupt, have and recover against the Western Tie and Timber Company the sum of twenty dollars for his costs herein and have execution therefor.

March 28, 1904.

(*Petition for Appeal.*)

And on the fifteenth day of April, A. D. 1904, a petition for appeal was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Eighth Circuit.

18 WESTERN TIE & TIMBER COMPANY, Appellant, *vs.* BEN A. BROWN, Trustee of the Estate of S. F. Harrison, Appellee. } Number 1953.

Petition for Appeal.

The above named appellant conceiving itself *agrieved* by the judgment and decree made and entered in this cause by the United States circuit court of appeals for the eighth circuit on or about the 28th, day of March 1904, modifying and affirming the judgment and decree of the district court in this cause does hereby appeal from said judgment and decree to the Supreme Court of the United States for the reason specified in the assignment of errors which is filed and submitted herewith; and said appellant prays that its said appeal may be allowed and that a transcript of the record, proceedings and papers in this cause, and upon which said judgment and order was made, duly authenticated, may be sent to the Supreme Court of the United States.

F. H. SULLIVAN,
Counsel for Appellant.

The foregoing claim of appeal is hereby allowed, this the 13th day of April 1904.

WALTER H. SANBORN,
Presiding Circuit Judge.

(Endorsed:) Number 1953. In the United States circuit court of appeals for the eighth circuit. Western Tie & Timber Company appellant *vs.* Ben A. Brown, trustee of the estate of S. F. Harrison, appellee. Petition for appeal. Filed Apr. 15, 1904, John D. Jordan, clerk. F. H. Sullivan, lawyer, Carleton building, St. Louis, Mo.

19 (*Assignment of Errors.*)

And on the fifteenth day of April, A. D. 1904, an assignment of errors was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to-wit:

In the United States Circuit Court of Appeals for the Eighth Circuit.

WESTERN TIE & TIMBER COMPANY, Appellant,
vs.
BEN A. BROWN, Trustee of the Estate of S. Frank Harrison, Appellee.
} Assignment of Errors.

Comes now Western Tie & Timber Company and says that the decree and judgment of the United States circuit court of appeals for the eighth circuit entered on March 28th, 1904 in the above entitled cause is erroneous and against its just rights for the following reasons, to-wit:—

First. Because the sale of supplies by the bankrupt to the employees of appellant was not a transfer of property by the bankrupt to appellant within the intent and meaning of the act of Congress relating to bankruptcy, such as to constitute a preference to appellant.

Second. Because the facts found by the United States circuit court of appeals show that appellant for some time prior to the adjudication had had in its employ persons to whom the bankrupt sold goods, and from the wages of such employees appellant deducted the amount due by the particular employé to the bankrupt and such acts did not constitute a transfer of property by the bankrupt as a preference within the meaning of the act of Congress relating to bankruptcy.

Third. Because on the facts as found by the United States circuit court of appeals, in selling goods to the employees of appel-
20 lant the bankrupt had no intention of preferring appellant over his other creditors, and under the act of Congress relating to bankruptcy as amended, without such intention on the part of the bankrupt his sale of goods to the employees of appellant did not constitute a voidable preference in favor of appellant.

Fourth. On the facts as found by the United States circuit court of appeals the act which that court holds to be a preference was the act of appellant in failing and refusing to pay to the bankrupt the amounts deducted from the wages of its employees on account of their indebtedness to the bankrupt and the failure and refusal of appellant to pay to the bankrupt the amount of such deduction, was not such an act as constitutes receiving or obtaining a prefer-

ence within the meaning of the act of Congress relating to bankruptcy.

Fifth. On the facts as found by the United States circuit court of appeals the act of appellant in deducting from the wages of its employees debts due by them to the bankrupt created an indebtedness in favor of the bankrupt against appellant for the amount of such deductions, and neither the failure nor refusal of appellant to pay these amounts to the bankrupt constituted the receipt of a preference by the appellant from the bankrupt within the meaning of the act of Congress relating to bankruptcy.

Sixth. On the facts as found by the United States circuit court of appeals the indebtedness of the bankrupt to appellant and the deductions by appellant from the wages of its employees on account of their indebtedness to the bankrupt constituted mutual debts and mutual credits within the intent and meaning of the act of Congress relating to bankruptcy and the aggregate of such deductions should have been set off against appellant's claim offered to be proven herein and the balance of said claim allowed against the estate.

Seventh. And for this, to wit, that by the record aforesaid
21 it appears that the judgment and decree aforesaid was given in favor of Ben A. Brown, trustee of the estate of S. Frank Harrison a bankrupt, whereas by the law of the land said judgment should have been given for said Western Tie & Timber Company and against the said Ben A. Brown trustee as aforesaid allowing the claim of said appellant as proven against the estate of said bankrupt, and said appellant Western Tie & Timber Company prays that the judgment of said United States circuit court of appeals for the eighth circuit modifying and affirming as modified the judgment herein of the district court of the United States for the northern division of the eastern district of Arkansas, may be reversed, annulled and held for naught as well as the judgment of the district court as so affirmed by the United States circuit court of appeals aforesaid and that appellant may be restored to all things lost by it by each and either of said judgments.

F. H. SULLIVAN,
Attorney for Appellant.

(Endorsed:) In the United States circuit court of appeals for the eighth circuit. Western Tie & Timber Company, appellant, *vs.* Ben A. Brown, trustee of the estate of S. Frank Harrison, appellee. Assignment of errors. Filed Apr. 15, 1904, John D. Jordan, clerk, F. H. Sullivan, lawyer, Carleton building, St. Louis, Mo.

(*Bond on Appeal.*)

And on the fifteenth day of April, A. D. 1904, an appeal bond was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to-wit:

Appeal Bond.

Know all men by these presents, that the undersigned Western Tie & Timber Company a corporation under the law of the State of Arkansas as principal and the United States Fidelity & Guaranty Company a corporation under the law of the State of Maryland as surety, are held and firmly bound unto Ben A. Brown trustee
22 of the estate of S. F. Harrison a bankrupt, in the full and just sum of one thousand dollars ($1000.00) to be paid to the said Ben A. Brown trustee as aforesaid, his certain attorneys, executors, administrators, assigns or successor; to which payment will and truly to be made we bind ourselves and our successors jointly and severally by these presents.

Sealed with our seals and dated this the — day of April in the year of our Lord, one thousand nine hundred and four.

Whereas lately in the United States circuit court of appeals for the eighth circuit in a suit pending in said court between Western Tie & Timber Company, appellant, and said Ben A. Brown, trustee as aforesaid, appellee, a decree was rendered against the said Western Tie & Timber Company and the said Western Tie & Timber Company having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse said decree, and a citation directed to the said Ben A. Brown trustee as aforesaid, citing and admonishing him to be and appear in the Supreme Court of the United States, to be holden at the city of Washington, within thirty (30) days from the date of said citation.

Now, the condition of the above obligation is such that if the said Western Tie & Timber Company shall prosecute said appeal to effect and answer all damages and costs if it fail to make good its said plea then the above obligation to be void, else to remain in full force and effect.

WESTERN TIE & TIMBER CO., [SEAL.]
By E. A. NIXON, *Vice Pres't.*

[SEAL.] THE UNITED STATES FIDELITY & GUARANTY CO.,
By PAUL W. GRAY, *Attorney in Fact.*

Approved April 13, 1904.

WALTER H. SANBORN,
Circuit Judge.

(Endorsed:) Western Tie & Timber Company, appellant, *vs.* Ben A. Brown, trustee of the estate of S. F. Harrison, appellee. Appeal bond. Filed Apr. 15, 1904, John D. Jordan, clerk. F. H. Sullivan, lawyer, Carleton building, St. Louis, Mo.

23 (*Citation.*)

And on the eighteenth day of April, A. D. 1904, a citation was filed in the clerk's office of said circuit court of appeals in said cause, the original of which, with the acceptance of service thereon, is hereto attached and herewith returned.

24 In the Supreme Court of the United States.

WESTERN TIE & TIMBER COMPANY, Appellant,
vs.
BEN A. BROWN, Trustee of the Estate of S. F. Harrison, Appellee.

UNITED STATES OF AMERICA, *Eighth Judicial Circuit*, } *ss:*

Citation.

To Ben A. Brown, trustee of the estate of S. F. Harrison, a bankrupt, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States, to be holden at the city of Washington, within 30 days from the date hereof, pursuant to an appeal filed in the clerk's office of the United States circuit court of appeals for the eighth circuit, wherein Western Tie & Timber Company is appellant and you are appellee to show cause if any there be why the judgment rendered against the said appellant as in its petition for appeal set forth should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, dated this the 13th day of April in the year of our Lord, one thousand nine hundred and four.

WALTER H. SANBORN,
Circuit Judge.

25 Service of the foregoing citation is hereby accepted in behalf of the appellee Ben A. Brown, trustee of the estate of S. F. Harrison, this the 16 day of April 1904.

STUCKEY & STUCKEY AND
H. L. PONDER,
Counsel for Appellee.

26 [Endorsed:] In the Supreme Court of the United States Western Tie & Timber Company appellant *vs.* Ben A. Brown, trustee of the estate of S. F. Harrison, appellee United States of America eighth judicial circuit *ss.* Citation Filed Apr. 18 1904 John D. Jordan, clerk. F. H. Sullivan, lawyer, Carleton building, St. Louis, Mo.

27 (*Clerk's Certificate.*)

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing twenty-six pages contain full, true and complete copies of the order of reference; order of adjudication; proof of claim of Western Tie and Timber Company; note S. F. Harrison to Western Tie and Timber Company; statement of account; motion of trustee to expunge claim of Western Tie and Timber Company; order of submission to U. S. circuit court of appeals; order to file finding of facts and conclusions of law; finding of facts and conclusions of law; opinion of U. S. circuit court of appeals; decree of U. S. circuit court of appeals; petition for appeal; assignment of errors, and bond on appeal, in a certain cause wherein The Western Tie and Timber Company is appellant, and Ben A. Brown, trustee of the estate of S. F. Harrison, bankrupt, is appellee, No. 1953, December term, 1903, as full, true and complete as the same remain on file and of record in my office.

I do further certify that the original citation with acceptance of service thereon is hereto attached and herewith returned.

In testimony whereof, I hereunto subscribe my name and affix the seal of said circuit court of appeals, at office in the city of St. Louis, Missouri, in the eighth circuit, this twenty-first day of April, A. D. 1904.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Endorsed on cover: File No. 19,307. U. S. C. C. of appeals, eighth circuit. Term No. 232. Western Tie and Timber Company, appellant, *vs.* Ben A. Brown, trustee of the estate of S. F. Harrison, a bankrupt. Filed April 23d, 1904. File No. 19,307.